

WEST TISBURY ZONING BOARD OF APPEALS
MINUTES SEPTEMBER 27, 2006
TOWN HALL 7 PM

PRESENT: Eric Whitman, Tucker Hubbell, Tony Higgins, Nancy Cole, Larry Schubert, Bob Schwier
ABSENT: Toni Cohen

ALSO PRESENT for All or Part of the Meeting: Glen Maki, David Desmarais, Frank Ferro, Ursula Ferro, Ernie Mendenhall (Bldg & Zoning Insp.), Selectman Glenn Hearn, Donnie Mills, Kristen Kinser, Robert Potts, Ian Fein, Judy Hartford, Ellen Wolfe, Marla Blakeley, Holly Alaimo, Bill Haynes, Robert Maciel, Bruce Haynes, Patty Linn, Bernice Kirby, Gale Rogers, Thad Harshburger, Edward Zlotowsky, Marty Nadler, Mike Colaneri, Paul Garcia, Clark Goff, Robert Skydell, Rose Willett, Chris Morse, Sheila Morse, Robert Rose, Tom Engley, Volker Kaempfert, Mark Weiner, Mike Diaz, Fella Cecilio

BUSINESS

- Minutes of September 19, 06 were approved with corrected typos.
- The ZBA signed a statement naming CHAPA as monitoring agent for Paquette and dropping DCRHA, per their request as Paquette had never signed monitoring agreements with them.
- MV Times advertising: The Times has made an offer to municipalities to reduce their legal ad rates. ZBA will advertise with them.
- Call from a Patty Salem re Russo lot in Deep Bottom development: She'd like to talk with ZBA informally regarding applying to appeal Zoning Inspector's decision that the Russo lot is unbuildable. ZBA at their last meeting had agreed that any application would be futile, as they had already granted such an action to the Russos who had missed 3 opportunities to get a house built. Julie will tell this prospective buyer that ZBA doesn't encourage an application as they don't see that at this point they would overturn an appeal of a decision of the Building Inspector that the lot is not buildable, if that is his determination..

HEARINGS

7:15 Continuation from Sept. 6 of a hearing for an application by Glenn Maki for a Special Permit to build a 25' by 27' detached garage with 12' by 27' overhead storage space, to need 15' of setback relief to be sited 35' from the eastern bound. Map 17 Lot 110; 113 Great Plains Rd; RU Dist.; Sect. 11.2-2 of Zoning Bylaw: Non-habitable detached or attached accessory structures which will not meet current setback requirements and/or exceed 676 SF in floor area, may be allowed by Special Permit from the Board of Appeals. *Previous Correspondence: **Not in favor**, Abutter David Desmarais.*

All correspondence on file in ZBA office at Town Hall and available to be read.

Dave Desmarais said he'd no problem with the size of the building, but he wanted it to make the 50' setback. Eric told him the hearing had been continued so that Mr. Maki could try to talk to him re the garage site. Both men said they had met and talked, but Mr. Desmarais said he hadn't changed his mind about the setback. Mr. Maki asked what it meant if an abutter opposes something; is it legal to not grant it just because of an abutter? He said he did not want to impact the neighborhood in a negative fashion and he respected the Bylaws, but to swing the garage around, he would have to clear away a lot of trees, exposing his buildings more. He offered to squeeze the 22' height down a bit and to increase the buffer zone between the 2 properties. He showed photos of the properties, showing that the garage would not be parallel with the Desmarais house and stated that having the garage face his house would reduce noise. The intended use is to store a small boat, a vehicle and kayaks and such.

Dave Desmarais said the trees in question were actually small scrub oak, and the Maki lot is a big one so the drive should be arranged so the garage can be built at the 50' setback. He said he was looking out for the value of his property and to remain buffered. Eric suggested a compromise; ZBA *does* pay attention to neighbors' needs, but if as stated the 2 houses are 370' apart it would seem fair to grant some relief. Mr. Desmarais, Mr. Maki and the ZBA agreed on the garage being sited 45' from the lot line: 5' of relief. The vote was unanimous to grant it.

7:30 An application filed by Ellen Wolfe to amend a Special Permit granted in April, 2002 regarding the alteration and extension in use to the premises at 632 State Rd, Map 22 Lot 47 ("Farmer Greene's former store"); The applicant would like to have clarified what can be sold under the term "gallery" and to be able to continue selling clothing at the premises; under Section 9.3-3. of the Zoning Bylaws; RU District.

See Sect 9.3-1C2

See 11.1-3A and 11.1-4A

*Original Special Permit; Original request from Donnie Mills; Statement from Ellen Wolfe, and, Correspondence: **In Favor:** 1) Owner Kristen Kinser and Donnie Mills; 2) Abutters Deborah Withers and Lydia and Richard Olsen; 3) Abutter Linda McGuire 4) West Tisbury Resident Joan Thomas; 5) WTR Helene Brown and Henry Kudish; 6) WTR Kay Leaird ; 7) WTR Leslie Simmons; 8) WTR Susan Gilbert; 9) WTR Sheila and Sandy Shapiro; 10) WTR Susan Feller; 11)WTR Charles Giordano; 12) WTR Margery Ablon; 13)WTR Jenny Devivo; 14) WTR Harriet Bernstein; 15) WTR Alan Brigish 16) WTR Patty Linn; 17) comment from ZBA member Toni Cohen who was ill and unable to attend. **Not in Favor:** 1) Planning Board, letters of July 26 and Sept. 27, and minutes.*

All correspondence on file in ZBA office and available to be read.

Please see Minutes of July 26, 2006 of the pre-application discussion

Correspondence was read. Ellen Wolfe's one page and a half statement was read. She defended that their "particular mix" of merchandise qualified as an art gallery, listing what was sold and listing many disciplines which are taught in art schools and should be included in the definition of art. Eric explained to the assembly that in 2002 Donnie Mills had come to them informally to discuss a change in use for his primarily farm stand building, as several had rented the property for a season to sell flowers, plants, honey, some produce, and miscellaneous other things and hadn't made it. By renting the property, he was able to subsidize some of the family agricultural practices. He wanted to rent the place out as an art gallery and/or an antique store. ZBA had told him back then they didn't think they could grant a change to the pre-existing farm stand use, and suggested he talk to the Planning Board. They, after discussion, told him to apply to the ZBA under change of use, Sections 11.1-3 11.1-4 [to allow a non-conforming use to be extended or altered if the ZBA finds it to be not substantially more detrimental to the area].

Influenced by testimony at the hearing, primarily from 2 long standing community members who are Planning Board members that the farm stand sold a wide variety of retail goods over the years, starting before zoning was adopted and the fact the neighbors wanted the business to be open and not an empty derelict building, the ZBA granted the change in/ extension of use as applied for; to be able to be a retail art gallery and/or antiques store. No mention of clothing was made in the application or permit. (Note: In making their decision at the public hearing, the ZBA did not specify what could be sold in an art gallery or antique store nor put conditions on the use, nor did members of Planning Board in attendance suggest doing so).

Eric asked Ellen Wolfe if she was applying to amend to have as much clothing for sale as currently? Yes, 40%. Eric said, personally he supported the store—he didn't like the mannequins (on the porch)—but that including clothing had never come up in the 2002 application, and the Planning Board feels it's not acceptable to sell clothes there, not part of the granted use. The question to ZBA it seems is whether the clothing is in line with an art gallery. Larry said from seeing what's on the porch, it looks like a dress shop. He wouldn't want to squash the store as the Town is dependent on home and small businesses, but he'd prefer the emphasis on clothing be kept inside. Ellen Wolfe said they, she and business partner Judy Harford, also displayed artwork on the porch and it was hard to do any business without things outside. She added this year, their third, was the first they'd heard they were not compliant.

Tucker said the businesses in the area, changes to them, had been an issue for several years. ZBA has to deal with this application tonight, but on a bigger scale, the Planning Board needs to make definitions, guidelines. For example, do we want a lot of things out on porches....Tree House has a lot of stuff outside on the road, is this bad? The area is changing with Humphries closed, Middletown closed....new or prospective owners come in (to ZBA) with applications and ideas and it's not a commercial district...ZBA deals with each, one by one. What is wanted should be addressed by Planning Board and Town. Businesses in that neighborhood are grandfathered or home businesses. The Planning Board would need to define, for example, art gallery. Donnie's decision was based primarily on Planning Board testimony.

Frank Ferro spoke: The stores listed by Ellen Wolfe as galleries also carrying clothes (not in W.T.) are in commercial districts. Over the years by accretion, there's a business district in the area. When he moved here in '71 there was only Humphries and the Red Cat (he said). Since, there's been the Glassworks, Haynes' (restaurant), and there's been no planning, and yet he owns a lot in North Tisbury he can't build on. If you permit anything, permit it with restrictions, restrict the footprint. Things shouldn't be left to the willynilly of (ZBA) decision making. He agrees with Tucker. He also said he can't see why clothing can't be art, and why focus on this, it's picky; clothing is wearable art, include it and then look at planning. Nancy asked if all clothing is wearable art? How is it defined by Ellen what clothing was sold. Ellen: They buy from small production houses or people. Tucker asked how big the production companies could be, 30 people? Ellen: It's possible...designers, pattern makers, dyers, etc.

Donnie Mills said when he applied for the '02 permit, he didn't envision clothes, but again, the definition of what is art. For example, Cristo's work or the sculptures around made from plumbing supplies. Or, an art gallery that sells prints, poster... they are not original pieces of art. Holly Alaimo spoke in favor, saying Bananas was succeeding as a business in this location. Marty Nadler: Doesn't think of it as a clothing store, feels it's a good thing, majority of people see it as a plus. Paul Garcia: Ernie allowed the use, he was pretty lenient. Now he's had complaints, the owners should comply and not sell clothes. Tom Engley: the 40% volume of clothing is what makes the business work, be possible. Thad Harshbarger, identifying himself as Judy Hartford's husband said we need a definition of gallery. The owners had asked them to clarify that what they were selling was compliant with the permit; they had spoken with Ernie Mendenhall to ensure they were compliant. There's no definition of gallery. He asked Ernie (in attendance), how many complained and who were they? Ernie said it was some who live closer than the abutters here tonight; he can't give names and number of people.

Nancy Cole said that the use was extended by special permit for the store, but wasn't said it could be a clothing store. The actual commercial district is down the road a mile. Donnie Mills said, for that matter, one of the things I sold at my stand was Hillside Farm T-Shirts. Eric moved to continue the hearing, Board members agreed and Oct 18 at 7:30 was set as the date. Eric said the ZBA will

probably meet with the Planning Board, as they suggested in their letter, about the neighborhood; what direction the Town wants to go here, maybe zoning changes, or let the area become residential. Billy Haynes said, go see the place as a Board and decide on the clothes. Board members individually had already visited the site.

8:10 An application by Robert Skydell and Rose Willett for a Special Permit for retail sales in connection with agricultural use, including sales of produce and related products customarily sold by farms and nurseries; under Sect. 3.1-1 of Zoning Bylaws; Map 22 Lot 55; 680 State Rd (former Middletown Nursery); RU District. *No Correspondence except for letter from Planning Board re both Bananas and this proposal (against). All correspondence on file in ZBA office in Town Hall and available to be read.*

The Board and audience read the 3 page proposal and looked at the site, plot, and floor plans presented. (On file in the ZBA office at Town Hall.) They would like to operate “a retail farm market/plant and garden store, including sale of packaged food items, prepared on-site foods, and beverages to the general public.” The applicants also intend to sell produce and fruits from other farms on-island and off, and to sell “a variety of juices, preserves, pickle, charcuterie, artisanal breads, farmstead cheeses, coffee roasting, pasta making and more.” A commercial kitchen would be on the site to produce goods to be sold. Coffee and other beverages would be sold. Hours of operation submitted were 6 AM to 7 PM between May and November. Parking is on-site and 24 spaces are shown on the site plan. Primarily hand tools would be used for gardening.

Robert Skydell began by saying they wanted to create a rural farm market they felt would be appropriate for the site and for the island. North Tisbury was a lovely area with an attractive sense of scale. They would use the existing building and make it more rural by adding a 3-sided porch, but would not increase the interior space. They’d rehab the greenhouses. He spoke of the need to re-define farm market, as the production and sale of food on the island has certainly changed from the time of when there were 40 working dairies on the Island...now there aren’t any. He envisioned having lots of island growers contribute to the market’s stock, to dovetail with existing agriculture on the island, not just importing peaches from Chile, say. They’d keep as close to agriculture as possible, using their cucumbers for pickles and in wrapped sandwiches. Food for sale would be picked, baked, cured on site. They would provide an outlet for someone who pickles beets that they grew, say.

Both he and Rose Willett have experience in the food business. He imagined a Chilmark Store circa 1975, with vegetable bins on the porch, like a smaller Morning Glory Farm market. He said concerns are all legitimate, but not unsolvable. He recalled speaking years ago in favor of the glassworks. That property has been rehabbed, upgraded as a result of the business. He ran Off Shore Ale for 8 years. People were against his proposal saying it would ruin the neighborhood, smell, be noisy, have rats. That did not happen, he was a good neighbor, wants to be a good neighbor. He, for example, used technology at Offshore that enabled him to give grain waste to farmer Elisha Smith to use.

Eric Whitman said it looked like a great plan and their aspirations are good, but not a legal zoning site to have it on, i.e. the RU District which runs through North Tisbury. Glassworks was permitted as a home business. Tucker said Jim (Athearn of Morning Glory Farm) started out as a farmer and still is: What do they propose to grow? Not a large percentage was the answer, due to lack of room, but certainly enough to be selling a majority of products produced on the place in June, July, August and September, as per Section 3 Ch 40A, which the Board referred to. Existing growing areas and greenhouses on the property would be used, and more individual gardens would be planted. They would sell herbs, greens, tomatoes, vegetables, plants. Tucker said it’s a good plan, but a hard sell for the area. Would they sell pre-made sandwiches? Probably not. What would they cook? They’d like

to see vegetable soup, zucchini bread, tomato recipes. He is not trying to propose growing things as just a foil, not a token.

Billy Haynes said he's (Bob Skydell) trying to create a deli type business and be open 7 days a week (zba note: Humphrey's, 3 doors down, was before zoning and the last operator started serving sandwiches to go without benefit of a special permit for expansion of use). It's not zoned for that, there's no farm around; there'd be noise, propane deliveries, garbage pickups. B&I go to businesses first, start picking up at 4:30 AM. Robert Skydell said he has used Bizarro and they come when he tells them to, not at 4:30 AM. Bob Maciel said he owned across the street; his grandson is about to move in; he has concerns. Paul Garcia said: it is a Residential Agricultural area, new businesses should be in the commercial area. It's a slippery slope to reinterpret zoning. Some businesses are for sale in the area, they'll need special permits for change. As nice as the proposal is, there's no legal basis.

Nancy Cole said it's not our decision to take this lot and allow this business here, as it's in the RU district. The hearing was closed and the meeting resumed. The ZBA voted unanimously to deny the application on the grounds that the area was not zoned for the proposed use: The ZBA found that the proposal exceeds an agricultural retail use as defined in the current Zoning Bylaw and MGL Ch. 40A and that the proposal includes the selling of products not customarily sold by farms and nurseries. It was beyond the scope of a farm stand. ZBA members expressed that it was a great idea, a good plan, and could be of benefit to small growers, but they were not able to allow it under the Zoning Bylaw.

The meeting was adjourned at 10:15 PM. Respectfully submitted, Julie Keefe. Bd. Admin.